IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.684 OF 1991

1. Shri.Taherbhai Taiyebhai Poonawala,
   Age- about 45 years, Occu. - Business,

2. Shri.Aziz Taiyabhai Poonawala,
   since deceased through his heirs :-

   a) Mrs.Shirin Aziz Poonawala,
      age about 37 years,

   b) Miss.Arwa Aziz Poonawala,
      age about 14 years,

   c) Miss Fatima Aziz Poonawala,
      age about 11 years,

   d) Mr.Husain Aziz Poonawala,
      age about 8 years

   Guardian of the minor Petitioner
   Nos.2b to 2d is Petitioner No.2a
   i.e. Mrs.S.A.Poonawala.

3. Shri.Ebrahim Taiyabhai Poonawala,
   Age about 41 years

   all residing at 1970, Gaffar Baig
   Street, Pune - 1. ..Petitioners

Versus

1. Shri.G.Hamid Hasan Patel,
   since deceased by his heirs

   a. Shri.Yusuf Gulam Hamid Patel,
      Age 24 years, Occu.-Business,

   b. Smt.Noorjahan w/o. Gulam Hamid
      Patel, age 50 years, Occu.Household,

   c. Miss Malika Iqbal Kureshi,
      Age 27 years, Occu.-Household,

   d. Miss.Anjuman Gulam Hamid Patel,
      Age 25 years, Occu.-Household,

   Respondent Nos.1a,1b,1d and 1e
   residing at 1101, Old Mokidhana,
   Pune 411 001.

Respondent No.1C residing at Beed,
Marathwada City Hotel, Beed,
Dist.Beed

2. Mrs.Hasina Mehboob Patel,
age about 48 years, Occu - business,
residing at 906 Bootee Street,
Pune 411 001.

3. Shri.Nizar H.Patel,
since deceased by his heirs :

a) Mrs.Mumtaz Nizar Patel,
wife, age about 52 years,

b) Mr.Raise Nizar Patel,
son, age about 29 years,

c) Mr.Vasim Nizar Patel,
son, age about 27 years,

d) Miss.Erfane Nizar Patel,
son, age about 25 years,

e) Miss Shabina Nizar Patel,
daughter, age about 23 years,

residing at 745 Bhawani Patel,
Pune - 2. ..Respondents

Mr.A.K.Abhyankar for the Petitioners.
Mr.K.Y.Mandlik for Respondent Nos.1(A) and 2.
Other Respondents have been duly served.

CORAM : DR.S.RADHAKRISHNAN,J.

JUDGMENT RESERVED ON :- 25TH AUGUST,2006
JUDGMENT DELIVERED ON :- 5TH DECEMBER,2006

ORAL JUDGMENT :

1. The present Petition has been filed by the Petitioners - Landlords on being aggrieved by the Judgment and Order in an Appeal by the Learned IV Additional District Judge, Pune dated 7th April, 1990 whereby the Appeal was allowed and the Judgment and

Decree of the Trial Court was set aside.

2. The facts and circumstances of the case are stated as follows :-

. The Respondent No.1 was inducted as a tenant in Block No.6, on the ground floor in the building known as Pastakia Mansion, 906, Booty Street, Pune by the then Landlady, Mrs.B.J.Pastakia on terms and conditions of the tenancy agreement dated 1st February,1969. In the said agreement it was stated that a rent of Rs.60/- per month was payable by the tenant exclusive of electricity charges and education cess and other recoverable taxes from the tenant. The Respondent No.1 was also to pay a sum of Rs.5/- separately by way of monthly water charges in addition to the above. On 27th December,1979, the present Petitioners had purchased the suit building from the then owner Mrs.B.J.Pastakia under a registered sale deed. It is the contention of the Petitioners that subsequently Respondent No.1 fell in arrears of payment of rent from 1st October,1980. The Petitioners gave a notice dated 9th June,1981 to Respondent No.1 calling him to pay the arrears of rent and also terminated the tenancy of Respondent No.1. It is alleged that the Respondent No.1 neither replied

to the said notice nor paid the arrears of rent.

3. The Petitioners had therefore filed a suit in the Court of Small Causes at Pune, being Suit No.1257 of 1982 for possession on the grounds of arrears of rent, illegal sub-letting, waste and damage and acquisition of suitable alternative accommodation. The Respondent Nos.2 and 3 in their written statement had contended that they had personally went to pay the rent, but the Petitioners had refused to accept the same, hence he was compelled to send the rent and taxes by a money order which was refused by the Plaintiff on 18th June,1981. The Respondent Nos.2 and 3 in their written statement had also denied having acquired alternative accommodation, but had the House No.1101, Old Modikhana, Pune much before taking over of the present suit premises on a tenancy basis. On 30th June,1986, the III Additional Judge, Small Causes Court, Pune had decreed the Petitioners' suit and directed Respondent Nos.1 to 3 to deliver possession of the suit premises on or before 31st December,1986 and Respondent No.1 was directed to pay arrears of rent of Rs.1485.40. In the said judgment, the learned Trial Judge as far as arrears of rent and acquisition of alternative accommodation grounds were answered in

favour of the Tenants. No issue was framed regarding waste and damage. The trial Court clearly gives a finding that there was illegal subletting, accordingly suit was decreed. However, in the said judgment the trial Court had not dealt with the issue of limitation. The present Petitioners did not challenge the findings regarding arrears of rent and acquisition of alternate accommodation.

4. Being aggrieved by the above Judgment and Order dated 30th June,1986, the Respondents had filed an Appeal in the Court of the IV Additional District Judge, Pune being Civil Appeal No.1036 of 1986. The Learned IVth Additional District Judge, Pune, by his Judgment and Order dated 7th April,1990 had allowed the Appeal and had set aside the decree of the Trial Court on the ground that the suit was clearly barred by law of limitation since no action was taken by the Landlords for more than 12 years after the breach of conditions of tenancy with regard to creation of illegal tenancy. The Lower Appellate Court has given a clear finding that though Respondent No.1 entered into the said tenancy agreement, he never stayed in the suit premises, right from inception, i.e. 1st February,1969, the date on which tenancy agreement was entered into. The lower Appellate Court also has recorded a finding that the illegal subletting in favour of Respondent Nos.2 and 3 took place from 1st

February,1969 and no steps were taken against the said breach of tenancy condition regarding illegal subletting for over 12 years.

5. In the present Writ Petition, on behalf of the Petitioners, Mr.Abhyankar, the learned Counsel has contended that Respondent No.1 had been a habitual defaulter in not paying rent regularly. Mr.Abhyankar, the learned Counsel for the Petitioners further contended that consequent to his non payment of arrears of rent, the tenancy was terminated on 9th June,1981. The learned Counsel for the Petitioners also contended that since the landlord-tenant relationships was determined on 9th June,1981, the suit was maintainable within the period of limitation as prescribed by Article 67 of the Limitation Act, 1963, which states the period of limitation of a suit by a landlord to recover possession from a tenant is 12 years from the time of the tenancy is determined. It should be noted that the issue of arrears of rent was answered against the landlords, and the said finding was not challenged before the lower Appellate Court, by the present Petitioners.

6. The learned Counsel for the petitioners relied on the case of **Amrutlal Jagjivandas Shah and Another**

Vs. Ramniklal Jagjivandas Shah, 2006(1) RCJ 131 of Gujarat High Court, contending that in the case of subletting, which is continuing since its creation would give rise to a continuous cause of action to the landlord. Therefore, it cannot be said that the suit is barred by limitation on the ground that the act was committed more than 12 years ago, but instead has been in continuance for the past 12 years and hence the suit can be held maintainable.

7. The learned Counsel for the Respondents, Mr.Mandlik relied on the case of **Ganpatram Sharma Vs.Smt.Gayatri Devi AIR 1987 SC 2016** contending that Article 66 of the Limitation Act,1963 would be applicable in the instant case as no determination of tenancy is necessary when there is a breach of condition of tenancy i.e. illegal subletting. A breach of condition of tenancy would attract the application of Article 66 of Limitation Act.

8. On behalf of the Respondent Nos.1A to 2, Mr.Mandlik has contended that Respondent Nos.2 and 3 have been residing in the suit premises since 1st February,1969, the same day the suit premises was rented by Respondent No.1 from the earlier landlady, Mrs.B.J.Pastakia. To put it in other words, breach of tenancy condition took place on 1st February,1969.

9. Mr.Mandlik, the learned Counsel for Respondent Nos.1A and 2, pointed out that the fact remains that this breach of tenancy was committed way back on 1st February,1969 and cannot be ignored by the subsequent determination of tenancy on 9th June,1981 by the said notice. Applying Article 66 of the Limitation act, 12 years would be the period of limitation prescribed for filing a suit for possession of immovable property by reason of breach of condition of tenancy starting from the date when the condition of tenancy was broken. Therefore, Mr.Mandlik contended that on computation of the said period of limitation from 1st February,1969, when the condition of tenancy was broken, suit was clearly barred by law of limitation.

10. Mr.Mandlik, in this behalf relied upon the judgment of the Supreme Court, in **Ganpat Ram Sharma Vs. Gayatri Devi AIR 1987 SC 2016,** specifically paragraph Nos.21 to 23, which read as under :-

> 21. Before we discuss the other aspect the result of the several decisions to which reference has been made above indicate that the position in law is that the landlord in order to be entitled to evict the tenant must establish one of the alternative facts positively, either that the tenant has built, or acquired vacant possession of or has been allotted a residence. It is essential that the ingredients must be pleaded by the landlord who seeks eviction but after the landlord has proved or stated that the tenant has built, acquired vacant possession or has been allotted a residence, whether it is suitable or not, and whether the same can be really an alternative accommodation for the

tenant or not, are within the special knowledge of the tenant and he must prove and establish those facts. **The other aspect apart from the question of limitation to which we shall briefly refer is that the landlord must be quick in taking his action after the accrual of the cause of action, and if by his inaction the tenant allows the premises to go out of his hands then it is the landlord who is to be blamed and not the tenant.** In the light of these, we have now to examine whether the suit in the instant case was barred by the lapse of time. But quite apart from the suit being barred by lapse of time, this is a beneficial legislation, beneficial to both the landlord and the tenant. It protects the tenant against unreasonable eviction and exorbitant rent. It also ensures certain limited rights to the landlord to recover possession on stated contingencies. (Emphasis supplied)

22. The next aspect of the matter is which article of the Limitation Act would be applicable. Reference was made to Art.66 and 67 of the Limitation Act,1963 (hereinafter called the Limitation Act) which stipulates that for possession of immovable property the cause of action arises or accrues when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition. Article 67 stipulates a period of twelve years when the tenancy is determined. Article 113 deals with suit for which no period of limitation is provided elsewhere in this Schedule. **On the facts of this case it is clear that Article 66 would apply because no determination in this case is necessary and that is well settled now.** Determination by notice under Sec.106 of the Transfer of Property Act is no longer necessary. (Emphasis supplied)

23. It is well settled that time begins to run from the date of the knowledge. See in this connection the decision of **Harbans Singh V. Custodian of Evacuee Property 'P' Block, AIR 1970 Delhi 82,** though that was a case under a different statute and dealt with a different article. See also **Ujagar Singh V. Likha Singh, AIR 1941 All 28 at p.30.** The Division Bench of the Punjab and Haryana High Court in **Somdas (deceased) V. Rikhu Dev Chela Bawa Har Jagdass Narokari, (1983) 85 Pun LR 184** held that in a suit for possession under Art.113 of the Limitation Act, **material date**

> **is one on which the right to sue for possession arises.**(Emphasis supplied)

11. Mr.Mandlik, the learned Counsel also relied upon another judgment of the Hon'ble Supreme Court in **Shakuntala Vs. Hemchand (1987)3 SCC 211,** wherein, the Hon'ble Supreme Court in paragraph-12 has observed as under :-

> 12. If that is so then on the strict grammatical meaning Article 67 of the Limitation Act would be applicable. This is indubitably a suit by the landlord against the tenant to recover possession from the tenant. Therefore the suit clearly comes within Article 67 of the Limitation Act. The suit was filed because the tenancy was determined by the combined effect of the operation of Sections 12 and 13 of the Bombay Rent Act. In this connection, the terms of Sections 12 and 13 of the Bombay Rent Act may be referred to. At the most it would be within Article 66 of the Limitation Act if we hold that forfeiture has been incurred by the appellant in view of the breach of the conditions mentioned in Section 13 of the Bombay Rent Act and on lifting of the embargo against eviction of tenant in terms of the Section 12 of the said Act. That being so, either of the two, Article 6 or Article 67 would be applicable to the facts of this case; there is no scope of the application of Article 113 of the Limitation Act in any view of the matter. Sections 12 and 13 of the Bombay Rent Act co-exist and must be harmonised to effect the purpose and intent of the legislature for the purpose of eviction of the tenant. In that view of the matter, Article 113 of the Limitation Act has no scope of application. Large number of authorities were cited. In the view we have taken on the construction of the provisions of Articles 67 and 66 of the Limitation Act and the nature of the cause of action in this case in the light of Sections 12 and 13 of the Bombay Rent Act, we are of the opinion that the period of limitation in

this case would be 12 years. There is no dispute that if the period of limitation be 12 years, the suit was not barred.

12. After hearing both the learned Counsel, and after perusal of the Trial Court judgment and the lower Appellate Court judgment, it is clear that in the instant case, though the tenancy was created in favour of Respondent No.1, the Respondent No.1 never stayed in the suit premises, right from inception, i.e. 1st February,1969. On the contrary, the Respondent No.1 had illegally sub-let the same to Respondent Nos.2 and 3 from 1st February,1969. If that be so, the breach of tenancy conditions occurred on 1st February,1969, and the suit ought to have been filed within 12 years, as per Article 66 of the Limitation Act. Ex-facie the suit is barred by law of limitation. I respectfully do not agree with the judgment of the Gujarat High Court, that in case of illegal subletting, there would be a continuing cause of action. The said view is contrary to the provisions of Article 66 of the Limitation Act.

13. Under the aforesaid facts and circumstances, I do not find any jurisdictional error or any perversity in the lower Appellate Court’s judgment holding that the suit was barred by law of limitation, which is impugned in this Petition. There is also no illegality in the above judgment. Hence, there is no merit in the above Petition, hence Rule stands

discharged, however, with no order as to costs.

(DR.S.RADHAKRISHNAN,J.)